PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Shunji HAYASHI, et al.

Docket No: Q84102

Appln. No.: 10/510,497

Group Art Unit: 1781

Confirmation No.: 1554

Examiner: Hamid R. BADR

Filed: October 7, 2004

For: CHEESE CAPABLE OF DISINFECTING HELICOBACTER PYLORI

DECLARATION (1) UNDER 37 C.F.R. § 1.132

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Mitsuro MATSUO, hereby declare and state:

THAT I am a citizen of Japan;

THAT I have received the degree of Master of Agriculture in 1989 from Kyoto University in Kyoto, Japan;

THAT I have been employed by Meiji Dairies Corporation since April in 1989, where I hold a position as Manager in Cheese Section in Cheese and Culinary Science Department, with responsibility for studies of production of cheese;

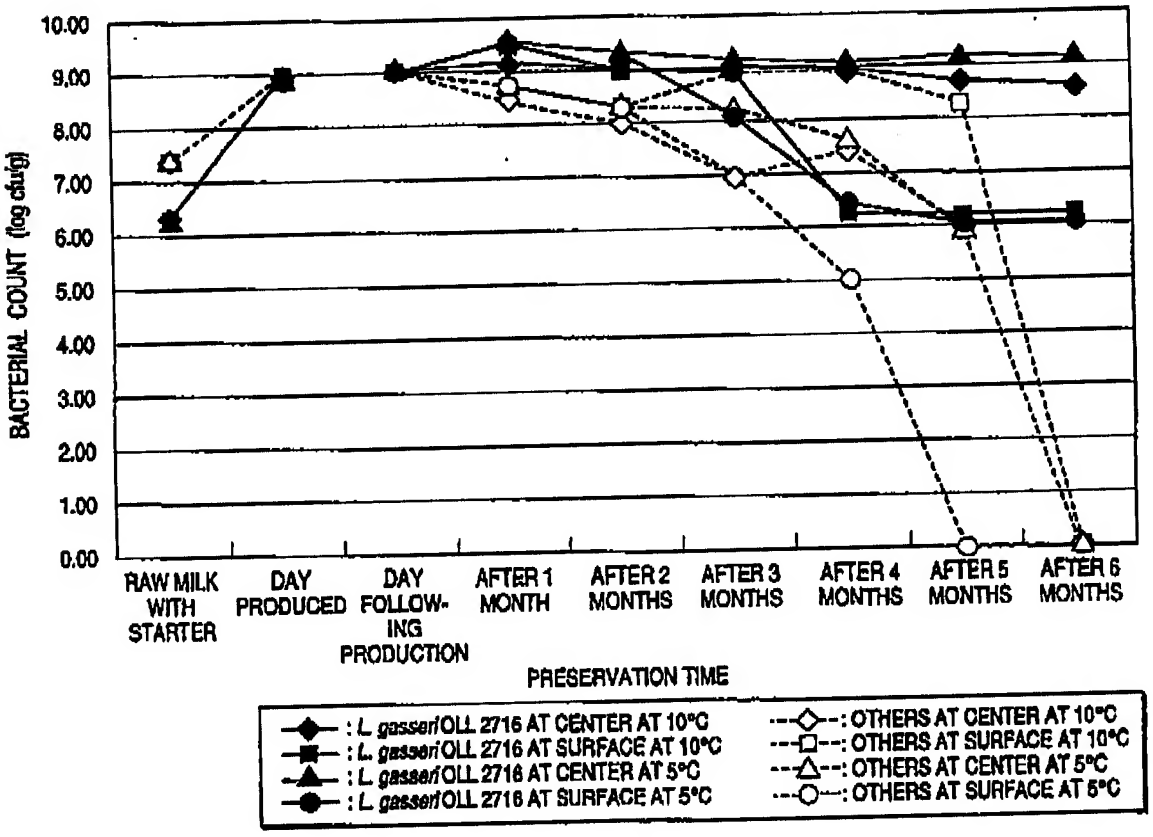
THAT I am familiar with relevant technology of the above-identified application.

Based on my experience and knowledge in the art, I am of the opinion that Fig. 3 of the above-identified application shows unexpectedly high bacterial counts of lactic acid bacteria

after preservation over six months.

A copy of the Fig. 3 of the above-identified application is reproduced below.

FIG. 3



I understand that Fig. 3 of the above-identified application shows bacterial count changes in *L. gasseri*-enriched gouda cheese according to Example 3 of the above-identified application.

In Example 3, *L. gasseri* OLL 2716 was inoculated at a ratio of 1% into a 10% skim milk medium containing 0.1% yeast extract. Then *L. gasseri* was cultured at 37°C for 24 hours,

thereby giving bulk starters. Subsequently, 20 kg of partially skim milk (SNF 8.5%, fat 3%), which had been sterilized at 73°C for 15 seconds, was adjusted to 32°C and inoculated with 1% of the *L. gasseri* bulk starter. Next, 20 g of yeast extract was further added. Then cheese curd was produced by a conventional method, pressed and incubated in a mold in a room at a room temperature of 25°C for 24 hours.

As shown in Fig. 3 of the above-identified application, when yeast extract was added when curd is made and then the curd was incubated, a unexpectedly high bacterial count can be kept for a long period of time of preservation, when the lactic acid bacterium was *L. gasseri* OLL2716 while the bacterial count was dramatically decreased when the lactic acid bacterium was other kinds than *L. gasseri* OLL2716. Even though the start bacterial count was lower, the vital bacterial count of *L. gasseri* OLL2716 was increased and maintained to a constant level even after stored for six months, while the counts of other kinds of bacteria dramatically reduced after 4 or 5 month preservation.

Therefore, it is my opinion that Fig. 3 of the above-identified application shows that a constant high bacterial count of lactic acid bacteria after six-month preservation is an unexpected and unpredicted.

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I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: October 5, 2010

Mitsuro MATSUO

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